

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 237 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO  
1 to 5 No

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DAHAYABHAI M PATEL

Versus

BANK OF BARODA  
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Appearance:

MR MM JADEJA for Petitioner  
MR RM DESAI for Respondent No. 1  
RULE UNSERVED for Respondent No. 2  
MR DN PANDYA for Respondent No. 4, 5, 6, 7, 8, 9,  
10,11,12,13,14,15  
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CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 27/07/2000

C.A.V. JUDGEMENT

Heard the learned counsel for the parties. This  
appeal arises from the orders made in Darkhast  
Proceedings No.2 of 1983 for execution of a consent  
decree whereby the sale of the property in question was

knocked down for a total sum of Rs.1,26,000 and the sale was confirmed and made absolute by a sequence of orders. The appeal states that the appellant is aggrieved by the orders made under Order 21 Rules 92 and 94 of the Code of Civil Procedure as also the order of knocking down the sale amount, and the main ground urged at the time of hearing is that the objections of the appellant to the attachment of the property were not disposed before confirming the sale. In support of these submissions, the learned counsel for the appellant has harped on the proviso to Rule 92 of Order 21 of the C.P.C.

2. Going through the grounds of appeal, the main contention of the appellant is that even though the Rojnama of Darkhast discloses that he was duly served with the processes of the Court, he was not actually served and posted with the knowledge of the progress of the Darkhast proceedings. On that basis, the further contention is that the appellant did not have the opportunity to prefer an application under Rule 89, 90 or 91 of Order 21 of the C.P.C. The photocopy of the Rojnama of Darkhast proceedings placed on record by the learned counsel for the appellant admittedly shows that the appellant was served with the notice and after filing of reply, the appellant had not participated in the proceedings. The appellant has not placed on record any material to suggest that he was, in fact, not served with the processes of the Court. The submissions urged in the oral arguments are obviously inconsistent with the grounds of appeal insofar as an altogether new case is sought to be made out by submitting that the objections of the appellant were not disposed before confirming the sale. If, as per the grounds of appeal, the appellant had no opportunity to make an application under Rule 89, 90 or 91 of Order 21, there was no question of disposing such objection. Otherwise, the contention that the appellant was not in the know of the Darkhast proceedings, even as the properties in question were being attached and sold by successive proceedings, has no substance.

3. The learned counsel for the respondent, i.e. the original decree-holder, has submitted that the submissions of the appellant are obviously misleading and vexatious as the properties put to sale in execution are contended in the appeal to be of someone else who have never made any grievance against the sale.

4. As seen earlier, the appellant has, instead of substantiating the grounds of appeal, attempted to urge an altogether new and different case in the course of

arguments. At one stage, the learned counsel for the appellant sought leave of this Court under Order 41 Rule 2 to urge a new ground of appeal which is not set forth in the memorandum of appeal. The leave was not granted for the reasons that after a consent decree made in 1982 and confirmation of the sale in execution of the decree by the impugned order in 1984, the appellant sought to make out an altogether new case at the fag-end of this proceedings. Thus, the appellant has, by his own contradictory stand and otherwise, failed to substantiate any of the grounds of appeal and, therefore, the appeal deserves to be dismissed.

5. In the result, the appeal is dismissed with no order as to costs.

Sd/-

(KMG Thilake)

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